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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

16 CR 522 (RJS)

5 PASQUALE PARRELLO,

Bail Hearing

7 Defendant.

9 New York, N.Y.
10 October 25, 2016
10:44 a.m.

11 Before:

12 HON. RICHARD J. SULLIVAN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 AMANDA KRAMER

JONATHAN REBOLD

18 Assistant United States Attorneys

19 MARK S. DeMARCO

20 KEVIN B. FAGA

Attorneys for Defendant

21 ALSO PRESENT: ANDREW KESSLER-CLEARY, PSO

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(Case called)

THE COURT: Good morning. Let me take appearances for the government.

MS. KRAMER: Good morning, your Honor. Amanda Kramer and Jonathan Rebold for the government.

THE COURT: Yes. Good morning.

MS. KRAMER: I'm joined at counsel table by United States Pretrial Services Officer Andrew Kessler-Cleary.

THE COURT: Yes. Good morning to each of you. Thank you.

And for the defendant.

MR. DeMARCO: Your Honor, Mark DeMarco and Kevin Faga for Mr. Parrello. Good morning, your Honor.

THE COURT: Good morning, Mr. Marco, Mr. Faga, Mr. Parrello.

I'll just remind everybody why we're here. Mr. Parrello was arrested, I guess, back in August and was detained on consent at that time without prejudice to renewing or making a motion for bail. So I now am in receipt of a letter request from Mr. DeMarco dated October 11, as well as a response from the government dated October 13; and then also an ex parte supplemental letter from the government dated October 13, which I don't intend to rely on; and then I finally have a follow-up letter dated October 21 from Mr. DeMarco just asking if certain information in the submission that he sent to

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1 me originally could be filed under seal or redacted. So that's
2 what I have.

3 I've read everything everybody sent me. I think the
4 standards are pretty clear. I don't think there's any dispute
5 as to what the standard the Court should be applying here is,
6 so I won't spend a lot of time on that. The way I thought I
7 would do this is hear from Mr. DeMarco first, since it's his
8 motion, and then hear from the government, and then I'll allow
9 Mr. DeMarco to respond to whatever points the government makes.
10 I may have some questions as we go.

11 How's that strike you?

12 MS. KRAMER: That's fine with the government, your
13 Honor. Thank you.

14 THE COURT: Mr. DeMarco?

15 MR. DeMARCO: Sounds good, Judge.

16 THE COURT: Okay. Great.

17 MR. DeMARCO: Judge, just that letter seeking the
18 redaction is a response to the Court's order to file my motion
19 on ECF.

20 THE COURT: Yes.

21 MR. DeMARCO: I haven't complied with that order
22 because I was --

23 THE COURT: I think that's fine. Some of the personal
24 information I think you're talking about are things that would
25 be covered anyway. There are things that are redacted by

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1 virtue of the local rule and/or the civil rule, the Federal
2 Rule of Criminal Procedure. With respect to other information,
3 it wasn't clear to me exactly what you were referring to, so --

4 MR. DeMARCO: There's a list on, I believe -- I can
5 tell you exactly -- on pages 4 and 5 of potential guarantors or
6 cosigners on Mr. Parrello's potential bond. And my letter just
7 seeks to redact the names, places of employment, and annual
8 salaries of those --

9 THE COURT: How about the addresses of the properties?

10 MR. DeMARCO: Those addresses we're okay being public.
11 They're a matter of public record.

12 THE COURT: The real property you don't have a problem
13 with?

14 MR. DeMARCO: No, your Honor.

15 THE COURT: Other than -- well, do you care about the
16 ownership of those properties?

17 MR. DeMARCO: No, they're family. They're
18 Mr. Parrello's family.

19 THE COURT: The additional guarantors?

20 MR. DeMARCO: That's right.

21 THE COURT: Which is a lengthy list. Does the
22 government have a view with respect to that?

23 MS. KRAMER: We have no objection to that information
24 being redacted, your Honor.

25 THE COURT: There's a presumption of open records.

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1 That presumption can be rebutted when there's good cause. The
2 personal privacy of nonparties is something that's typically
3 considered and is often a basis for sealing or redacting
4 certain information from the record. So I think that that
5 probably makes sense here. I mean, it's a long list. I think
6 the number of proposed cosigners is relevant, so it's one, two,
7 three, four -- 37 by my count. Is that what you have?

8 MR. DeMARCO: Yes.

9 THE COURT: I will say it includes a medical doctor, a
10 retired judge, somebody who works for the Archdiocese of New
11 York, various business people, union people, restaurant owners.
12 It's quite an assortment of individuals and from quite an
13 assortment of employment. So I think that's enough said.

14 All right. Go ahead.

15 MR. DeMARCO: So we're okay with the redaction?

16 THE COURT: You can redact those names.

17 MR. DeMARCO: I will electronically file this document
18 redacted by this afternoon by the end of business.

19 THE COURT: Okay.

20 MR. DeMARCO: Judge, may I?

21 THE COURT: You may proceed, yes.

22 MR. DeMARCO: Thank you. Judge, in this case against
23 Mr. Parrello, there is a presumption of detention, but it's a
24 rebuttable presumption, your Honor. And it's our position that
25 there is a combination of factors here that reasonably assure

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1 safety to the community and Mr. Parrello's return to court
2 should he be released.

3 THE COURT: I think the government's not really
4 arguing risk of flight, are you?

5 MS. KRAMER: Your Honor, given the proposed package
6 with the number of cosigners, properties belonging to family
7 members, strict pretrial supervision, home detention, I think
8 it's fair to say that some combination of conditions could be
9 fashioned to address the risk of flight to mitigate it
10 sufficiently under the Bail Reform Act. So that's not a basis
11 for our argument.

12 THE COURT: You're relying on dangerousness and
13 principally you're relying on the fact that Mr. Parrello
14 engaged in this alleged conduct while he was on supervision --

15 MS. KRAMER: Yes, your Honor.

16 THE COURT: -- for a prior conviction, and that he
17 basically ordered and directed others to engage in acts of
18 violence from the comfort of his own home and business, which
19 gives little consolation, then, that he would be deterred or
20 dissuaded from engaging in comparable acts of violence going
21 forward.

22 MS. KRAMER: Exactly, your Honor.

23 THE COURT: So I'll let you respond, Mr. DeMarco.
24 Let's just focus on dangerousness.

25 MR. DeMARCO: Your Honor, I still want to go into a

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1 little bit of Mr. Parrello's background in order to do this.

2 THE COURT: That's fine.

3 MR. DeMARCO: As the Court can see, Mr. Parrello is
4 not a young man. He's 72 years old. He was born in 1944 in
5 the Bronx, in St. Francis Hospital in the Bronx. He attended
6 Theodore Roosevelt High School in the Bronx. He's been married
7 to the same woman for 50 years, your Honor. In 1966 he married
8 Mrs. Parrello. He has one daughter who is a professor at the
9 Dominican College. She obtained her doctorate in sociology, I
10 believe criminal justice. He has grandchildren who he's very
11 close with and actually cared for before he was arrested in
12 this case. His whole family, his whole life, friends,
13 neighbors, either live in the Bronx or Westchester County or
14 somewhere within the metropolitan area.

15 Now, Mr. Parrello has one prior criminal conviction,
16 although at the age of --

17 THE COURT: It's two, I guess.

18 MR. DeMARCO: I'm not sure if that conviction at the
19 age of 17, your Honor, is a criminal conviction because it's
20 for disorderly conduct.

21 THE COURT: I'm not too worried about that one,
22 whatever it is. So, yes, we have a felony that got him 88
23 months, I think, here.

24 MR. DeMARCO: That's right. In 2003 he was -- he was
25 convicted upon his plea of guilty to a racketeering indictment.

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1 He was sentenced by Judge Carter to 88 months' imprisonment.
2 So the only issue now is whether Mr. Parrello is a danger to
3 the community.

4 THE COURT: Right.

5 MR. DeMARCO: It's important to note, your Honor, that
6 in this indictment, he's not implicated in the arson. It's not
7 alleged that he trafficked firearms or possessed firearms. The
8 indictment alleges conduct that occurred in 2011 to 2014. That
9 would be the extortion, the loansharking count, and the
10 assaults that took place in 2011 and 2013. Now, he was
11 arrested in 2016, August 2016, and there's no allegations of
12 violence, extortion or conduct of assaults or anything of a
13 violent nature after 2014, but let's go on.

14 In this case, your Honor, where we're concerned with
15 safety to the community, it's important to note that the
16 outpouring from Mr. Parrello's community has been overwhelming.
17 As set forth in my bail application, the written one, 37 people
18 have come forward offering to act as cosigners on any bond
19 issued by this Court. Now, we have doctors, lawyers, retired
20 judges. We have business owners. We have plumbers. We have
21 carpenters. We have people from all walks of life from the
22 community that are -- the outpouring has been incredible, your
23 Honor. Basically, what these people are saying in volunteering
24 to cosign any bond for Mr. Parrello is that he is not a danger
25 to the community. This is a man that we trust. This is a man

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1 who we respect. This is a man who we're willing to come into
2 court and risk our financial futures on because we believe that
3 he is not a danger to the community.

4 THE COURT: Well, I mean, I gather they haven't heard
5 the wiretaps and they haven't seen the evidence, but at least
6 the government's letter quotes directly from some of the calls
7 that reflect Mr. Parrello's involvement in directing acts of
8 violence and racketeering. So I don't know what the cosigners
9 know or don't know, but I'm not sure that it's a vote and that
10 the sheer number of them means that he's not a danger. It's a
11 different inquiry. Is there a response?

12 MR. DeMARCO: They know the man seated in this
13 courtroom. They know the character of the man seated in this
14 courtroom. They know him from personal dealings with him, and
15 often that's a way to size up a person's character, an
16 individual's character, whether he or she is a danger to a
17 community.

18 Now, Mr. Parrello operated a restaurant on Arthur
19 Avenue in the Bronx. It's funny, if you walk down Arthur
20 Avenue, there's a slew of businesses. And it seems as if --
21 for example, Gilbert Teitel. He owns Teitel Brothers. That's
22 on Arthur Avenue. He's come forward and offered to sign a
23 bond. Sal Biancardi, who is the owner of Biancardi Meats
24 that's on Arthur Avenue right down the block from
25 Mr. Parrello's restaurant, he's come forward and offered to

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1 sign a bond. You have Joseph Cozenza, who is the owner of
2 Cozenza's Fish Market right on Arthur Avenue, right down the
3 block from Mr. Parrello's restaurant. He's come forward and
4 offered to sign a bond. Mr. Parrello's community, both
5 business and personal, have come forward, pretty much have said
6 to this Court and to me and to Mr. Parrello: We do not believe
7 he is a danger to the community.

8 They haven't heard the recordings. Quite frankly,
9 your Honor, neither have I, because they haven't been turned
10 over yet. Well, they haven't been -- they've been provided by
11 the government to the discovery coordinator, and the discovery
12 coordinator's in the process of putting that together for the
13 attorneys in this case.

14 But these are just allegations, your Honor. These are
15 recordings that we haven't heard. The allegations in the
16 indictment are just that, they're allegations. I realize the
17 standard here is preponderance of the evidence, but in
18 preparing for this, I took the time to read the case *U.S. v.*
19 *Salerno*, the Supreme Court case. And in his dissent, Justice
20 Marshall quoted, and he said: "Allegations are legally
21 presumed to be untrue." And that's where we are here. We have
22 allegations against Mr. Parrello that are presumed to be
23 legally untrue at this time.

24 Now, in *Salerno*, I noted that -- I noticed that the
25 Supreme Court condoned pretrial detention of Anthony Salerno on

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1 the grounds they did not violate his Fifth Amendment right to
2 due process or his Eighth Amendment rights. Now, in that case,
3 your Honor, Mr. Salerno was 74 years old, two years older than
4 Mr. Parrello is today, but in that case, what I learned in
5 reviewing the history of *U.S. v. Salerno* is that this was the
6 second indictment unsealed against Mr. Salerno. At the time
7 this case became at issue, Mr. Salerno was out fighting the
8 commission case, which he was indicted in 1995 in the
9 commission case. And he was out on \$2 million bond in a case
10 where murders were alleged, violent acts were alleged by
11 Mr. Salerno. Mr. Salerno was out on that case until this
12 second indictment was unsealed in March of 1986 that resulted
13 in *U.S. v. Salerno*. So there is precedent for allowing people
14 charged in these types of cases to --

15 THE COURT: Of course. It's not a foregone
16 conclusion. It's not a function of being charged. And most of
17 the folks in this case are out on bail.

18 MR. DeMARCO: That's right.

19 THE COURT: I mean, the vast majority. There's 46
20 defendants. I think there's only seven in custody. So you're
21 not telling me anything I don't know on that score. I
22 understand.

23 MR. DeMARCO: Your Honor, it's our position there are
24 mechanisms in place that, in addition to any cosigners and any
25 monetary amount of any bond that's fixed by this Court, there

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1 are measures in place to assure (a) that Mr. Parrello doesn't
2 flee and, more importantly, that he is not a danger to the
3 community: strict pretrial supervision, electronic monitoring,
4 home detention.

5 In fact, I was doing some additional research, and I
6 noticed in a case before Judge Swain, where a defendant was
7 charged in a bank robbery or bank burglary indictment, she
8 imposed a condition whereby the defendant in that case, his
9 name was Anthony Mascuzzio -- the indictment is 16 CR 576 --
10 would not be permitted to possess a cell phone and that his
11 landline would be monitored to prevent any communication to
12 anyone that the Court was concerned with. Let's leave it at
13 that. There are mechanisms in place, in addition to the
14 monetary amount fixed on a bond, that can ensure that
15 Mr. Parrello, at 72 years old, is not a danger to the
16 community. And this is one of the mechanisms to safeguard
17 against that, your Honor.

18 He's 72 years old, Judge. He's not a risk of flight.
19 There's a home where he could live, where he would be amenable
20 to home detention, Judge, electronic monitoring, monitoring of
21 his telephone. He would forgo the right to possess a cell
22 phone. All measures that would alleviate this Court's concern
23 that he's a danger to the community. No association with any
24 felons, no association with codefendants absent the presence
25 of --

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1 THE COURT: Those were conditions of supervised
2 release in many ways; right? He wasn't allowed to be
3 associating with felons when he was on supervised release, and
4 yet he was according to what was in the indictment.

5 MR. DeMARCO: Judge, Mr. Parrello was discharged from
6 supervised release in May of 2011. It's my understanding that
7 the crimes alleged in this indictment --

8 THE COURT: Wait. He was discharged from supervised
9 release in 2011?

10 MR. DeMARCO: May of 2011.

11 THE COURT: Sentenced to 88 months.

12 MR. DeMARCO: In 2003. But he was arrested in 2001,
13 and he was detained in that case.

14 THE COURT: He was detained in that case?

15 MR. DeMARCO: Yes, your Honor.

16 THE COURT: The charges here are more serious than the
17 charges there, wouldn't you say?

18 MR. DeMARCO: Yes.

19 THE COURT: But he was detained in that case. I
20 interrupted you. I'm sorry.

21 MR. DeMARCO: Your Honor, that was 2001. Now we're
22 talking about -- he was much younger back then. He was 15
23 years younger. He was 56, 57. There is technology in place
24 today, as I mentioned previously, that could alleviate any
25 concern that Mr. Parrello was a danger to the community that I

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1 believe may not have been in place back in 2001 when the
2 initial -- when his first case was unsealed.

3 THE COURT: What did not? Electronic monitoring?

4 MR. DeMARCO: I'm sorry?

5 THE COURT: Electronic monitoring?

6 MR. DeMARCO: No, that existed.

7 THE COURT: Yes, that definitely existed.

8 MR. DeMARCO: The ability to monitor his phones.

9 THE COURT: That existed.

10 MR. DeMARCO: Not to the extent -- not as easy as it
11 would be to do so today, your Honor.

12 THE COURT: Maybe. I'm not sure. I mean, I can't
13 say. It seems to me that technology is sort of a double-edged
14 sword. So for every advancement, there's probably an equal and
15 opposite counterstrategy that can be employed. But I have no
16 reason to think that -- anyway, I understand the technology
17 about as well as you do, I suppose. I don't claim to be an
18 expert in the field. It is not unusual that defendants
19 awaiting trial do get bail, and they are able to comply with
20 the conditions of bail by being on electronic monitoring with
21 GPS location, etc. I mean, it happens. But those are
22 typically cases that involve risk of flight as the primary
23 concern, not dangerousness.

24 But I interrupted you again. I'm sorry.

25 MR. DeMARCO: No, I was answering your Honor's

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1 question about whether he associated with felons while on
2 supervised release, and my response to that was it's my belief
3 that the crimes alleged in this indictment took place after he
4 was discharged from supervised release. He was released -- he
5 was discharged from supervised release in May of 2011, and it's
6 my understanding that the crimes alleged in this case took
7 place after that, if that answers your Honor's previous
8 question.

9 Your Honor, Mr. Parrello is not --

10 THE COURT: The racketeering conspiracy is from at
11 least in or about 2010 up to and including at least in or about
12 2016.

13 MR. DeMARCO: But I believe --

14 THE COURT: So that predates his --

15 MR. DeMARCO: Right, the conspiracy.

16 THE COURT: Racketeering conspiracy.

17 MR. DeMARCO: Based on the specific allegations with
18 respect to Mr. Parrello that I reviewed, your Honor --

19 THE COURT: Well, he's in the racketeering conspiracy.

20 MR. DeMARCO: He joined the conspiracy at a later
21 time. It's impossible for him not to have been in it in 2010
22 through -- isn't it, Judge?

23 THE COURT: Why would it be impossible to be in it?

24 MR. DeMARCO: Not impossible. It would be possible.

25 THE COURT: Well, I mean, the government can shed

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1 light on this, I suppose, in a minute. But it's not obvious to
2 me that his involvement was only after he was off of supervised
3 release. The substantive counts all postdate that, because
4 substantive counts typically have a five-year statute of
5 limitations. But the racketeering conspiracy, the beginning
6 date and the end date are what matters, and the end date is
7 certainly within the statute of limitations period and the
8 beginning date is what it is, if it straddles.

9 MR. DeMARCO: Your Honor, another argument that cuts
10 against Mr. Parrello being a danger to the community is, again,
11 I keep repeating, he's 72 years old. But as a 72-year-old man,
12 he does have assorted health ailments. He has high blood
13 pressure. He has a history of back problems. He has problems
14 with his hearing. He has problems with his teeth. I believe
15 that these are also factors that this Court should consider in
16 determining whether or not Mr. Parrello is a danger to the
17 community.

18 Your Honor, with that said, I'm asking that this Court
19 set a extremely high secured bail bond in the amount nearing
20 \$2 million, secured by the properties listed as well as the
21 signature of however many cosigners that are vetted by the
22 government that this Court requires with a condition set forth
23 for strict pretrial supervision of electronic monitoring and
24 whatever mechanisms that this Court can think of to ensure
25 that, to alleviate your concern, that Mr. Parrello is not a

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1 danger to the community, and I submit that he's not. And there
2 are mechanisms in place that can ensure that he is not.

3 THE COURT: All right. Let me hear from Ms. Kramer,
4 and then I'll give you a chance to respond to her.

5 Ms. Kramer, I guess the first question I have for you
6 pertains to the period of Mr. Parrello's involvement in the
7 racketeering conspiracy. The indictment says that the
8 conspiracy went from at least 2010 right up until 2016, the
9 present or the date of the arrest. What's the evidence with
10 respect to Mr. Parrello's involvement?

11 MS. KRAMER: So, your Honor, there was a wiretap or
12 more than one wiretap in Westchester County that captured the
13 defendant engaged in gambling conduct while on supervised
14 release in this case. So the defendant will be receiving that
15 evidence. And it unequivocally demonstrates that he was
16 participating in this conspiracy and actively committing crimes
17 while on supervised release.

18 Shortly after his supervised release, it appears he
19 wasted no time in engaging in violent crimes. The order to
20 break the knees of the panhandler who was disturbing customers
21 of Rigoletto restaurant was given by the defendant in June of
22 2011. So approximately one month, maybe six weeks after his
23 supervised release terminated, he was ordering his underlings
24 to break the knees of a panhandler. The command to choke and
25 threaten to kill someone who owed him money was given in

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1 December of 2011, approximately seven months after his
2 release -- after his termination of supervised release.

3 While the government must show that the defendant is a
4 danger by clear and convincing evidence, there is an abundance
5 of clear and convincing evidence in this case if all the Court
6 looks at are the defendant's own words. He commanded his
7 underlings, in addition to the violent crimes I just recited,
8 to use a pipe to strike an enemy of his in the knees, to slash
9 the tire of someone who owed him money, to force that man to
10 fix the tire at which point he could be surrounded, and he also
11 ordered one of his underlings to buy 9 millimeter handguns. He
12 asked if they were clean and ordered him to get some nines.

13 Just taking his own recorded statements, there's
14 overwhelming evidence that he's a danger to the community,
15 coupled with the fact that even on federal supervised release,
16 he didn't refrain from engaging in this conspiracy, which would
17 include typically more severe penalties and stricter conditions
18 than any pretrial supervision --

19 THE COURT: What would include stricter?

20 MS. KRAMER: The federal supervised release that he
21 was on when he was committing crimes following his custody,
22 following his incarceration for his prior conviction.

23 THE COURT: You're saying that would be stricter than
24 bail conditions as part of pretrial supervision?

25 MS. KRAMER: Well, I think, generally speaking, it's

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1 fair to say that the violation of a term of supervised release
2 carries more significant and certain penalties than the
3 violation of terms of pretrial supervision. That did not
4 dissuade the defendant from committing very serious crimes
5 while on supervised release.

6 THE COURT: But the crimes while he's on supervised
7 release are his joining in the racketeering conspiracy.

8 MS. KRAMER: Yes.

9 THE COURT: What's the evidence of that while he was
10 on supervised release?

11 MS. KRAMER: Wiretaps capturing the defendant engaged
12 in gambling conduct and directing others to engage in gambling
13 conduct.

14 THE COURT: So, in other words, you have evidence of
15 his involvement while on supervised release. The evidence of
16 overt acts of violence may postdate his conclusion of
17 supervised release, but only by a month or two?

18 MS. KRAMER: That is accurate, your Honor.

19 THE COURT: Okay.

20 MS. KRAMER: The proposed cosigners that the defendant
21 offered who purportedly know his character and believe he's not
22 a danger presumably are not his enemies, presumably have not
23 been on the receiving end of these threats or any of the
24 extortions that the defendant ordered or participated in, and
25 should not be given any weight whatsoever in a determination of

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1 his danger. His demonstrated record, his appetite and capacity
2 for violence, which was almost entirely demonstrated through
3 his direction to others, makes him a real danger under any set
4 of conditions that the Court could impose for pretrial
5 supervision. He has given orders to others from the comfort of
6 his own home, from his restaurant. Home detention would not in
7 any way mitigate that dangerousness.

8 The electronic monitoring that he proposes, the
9 cosigners, the bond, all address a risk of flight that is not
10 the government's primary concern here. It's the danger to the
11 community and, as Pretrial Services indicated and the
12 government agrees, there is no set of conditions that could
13 protect the community from this defendant, as demonstrated from
14 his prior conviction, his conduct on supervised release, and
15 his conduct in this case.

16 Thank you, your Honor.

17 THE COURT: Thank you, Ms. Kramer.

18 Mr. DeMarco, anything you'd like to say --

19 MR. DeMARCO: Yes, Judge.

20 THE COURT: -- in response?

21 MR. DeMARCO: I'm sorry to interrupt you, your Honor.

22 THE COURT: I said anything you'd like to say in
23 response?

24 MR. DeMARCO: It's my understanding that the
25 consensual recordings in this case began in or about

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1 December 2011, after Mr. Parrello was off supervised release,
2 which expired in May of 2011.

3 Now, the government speaks of Mr. Parrello's engaging
4 in gambling conduct while he was on supervised release, and
5 that was sometime in 2011, presumably before May of 2011.

6 THE COURT: Well, presumably 2010, which is the
7 beginning date of the racketeering conspiracy. But let me
8 interrupt you and just see if Ms. Kramer can clarify.

9 You're saying there were recordings of Mr. Parrello
10 engaged in gambling activity or discussions with others who are
11 engaging in the racketeering conspiracy?

12 MS. KRAMER: Yes, your Honor. The case originated
13 with some wiretaps that were obtained by the Westchester County
14 District Attorney's Office on a number of individuals' phones.
15 And one of those wiretaps, at least one, captured the defendant
16 engaging in gambling conduct while on supervised release in
17 2011.

18 THE COURT: Okay.

19 MR. DeMARCO: Judge, here's my question, and I don't
20 know if the government's prepared to answer it. What is
21 engaging in gambling conduct? Is a conversation by
22 Mr. Parrello with the friend saying: Hey, did you see that
23 game? I wonder if they covered the spread. Who do you think's
24 going to win the World Series, the Cubs or the Indians? It's a
25 very general term to say "he engaged in gambling conduct"

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1 without proffering to this Court the contents of that
2 conversation. I mean, what is gambling conduct? I mean, and
3 how does one engage in gambling conduct that violates the
4 supervised release in this case?

5 THE COURT: Well, if you want more specificity, I
6 think that's a fair question, but the indictment certainly
7 alleges gambling activity; right? That's one of the predicates
8 for the crime, isn't it?

9 MR. DeMARCO: Yes. I'm more concerned about this
10 conversation that the government's alleging took place while he
11 was on supervised release and how he violated his supervised
12 release by engaging in this conduct and specifically what this
13 conversation was that the government alleges involves gambling
14 conduct while he was on supervised release.

15 THE COURT: All right. So, Ms. Kramer, I think that's
16 a fair question. You raised it. So what are you referring to?

17 MS. KRAMER: Certainly, your Honor. I would have to
18 speak with one of my colleagues to tell the Court which of the
19 six different illegal gambling schemes the defendant was
20 speaking about on the wiretap. But the wiretap captured this
21 defendant, and many others, engaged in six different illegal
22 gambling schemes, one of which was an illegal casino-style card
23 club and five of which involved illegal sports gambling
24 operations in New York, Florida, and Costa Rica, principally
25 conducted using the Internet, either directly or through

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1 others.

2 I would have to check with one of my colleagues, I'm
3 happy to do that, to tell the Court which one of those schemes
4 the defendant was engaged in on a wiretap recording. But I can
5 represent right now that he was not discussing what happened in
6 a football game yesterday. He was engaged in the business of
7 illegal gambling. And I am happy to get more specific
8 information if it's necessary for the Court's determination of
9 the defendant's dangerousness.

10 THE COURT: Look, I think it's relevant, certainly,
11 and Mr. DeMarco, I think, has a right to see those things which
12 the government's relying on and which the Court might rely on.
13 So they're all part of the discovery which, given the volume
14 and given the fact that we have a discovery coordinator and
15 some issues with the protective order, has been slow getting
16 out. So I just adjourned the conference we were going to have
17 next week because it seemed pointless in light of the fact that
18 most of the discovery has not gone out. But you're entitled to
19 that stuff, Mr. DeMarco, and you should have it shortly is my
20 assumption.

21 MR. DeMARCO: I understand. When the government
22 alleges Mr. Parrello was violating his supervised release with
23 conversations, I'm curious as to what those conversations were
24 specifically, not in a general sense.

25 THE COURT: All right. But, look, the indictment

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1 alleges that he was part of a racketeering conspiracy that
2 dates back to 2010, which is the time period when he's on
3 supervised release.

4 MR. DeMARCO: The conspiracy may date back to 2010,
5 your Honor. That doesn't mean Mr. Parrello joined it while he
6 was on supervised release, your Honor.

7 THE COURT: Okay.

8 MR. DeMARCO: He could have joined it sometime after
9 his discharge --

10 THE COURT: He could have.

11 MR. DeMARCO: -- if at all.

12 THE COURT: Well, he could have, but certainly there's
13 evidence before me that he's recorded in 2011. So I think one
14 could say, yes, maybe he didn't join until after he got off the
15 supervised release. The government in response to that
16 specific suggestion has said, no, he was intercepted even
17 before that. It's not something they had relied on before.
18 They're responding to my questions.

19 So I think I don't want to be too critical of them,
20 because that's not something I think they're particularly
21 relying on. You raised the point, and then I asked the
22 question. But the indictment itself alleges a conspiracy that
23 dates back to when he was on supervised release, and the acts
24 of violence that are expressly alleged and relied on in the
25 government's letter are things that -- at least the earliest

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1 one is in 2011, about a month or so after he's off of
2 supervised release. So I think the inferences to be drawn are
3 that supervised release was not terribly effective at deterring
4 criminal conduct. I mean, I think that's the inference one
5 would draw from the facts presented by the government if true.

6 But you had other points you wanted to respond to,
7 perhaps.

8 MR. DeMARCO: Judge, what I want to say is that -- and
9 I apologize for repeating myself -- Mr. Parrello is presumed
10 innocent of all of the charges.

11 THE COURT: Right.

12 MR. DeMARCO: And all these allegations will be
13 proven, if at all, at a trial. He is not a danger to the
14 community, and with the proper mechanisms put in place by this
15 Court, this Court could ensure that he would not be a danger to
16 the community. And for this reason, we're asking that a bond
17 be granted by this Court.

18 THE COURT: Okay. Thank you.

19 Is there anything Pretrial Services would like to say?
20 I have the Pretrial Services report which concludes or
21 recommends that there are no conditions that would assure the
22 safety of the community and therefore recommends that
23 Mr. Parrello be detained. Is there anything beyond what's in
24 the report?

25 OFFICER KESSLER-CLEARY: No, your Honor. That is the

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1 recommendation of Pretrial Services as it stands.

2 THE COURT: All right. I'm prepared to rule. I think
3 the package prepared by Mr. DeMarco and argued by Mr. DeMarco
4 is impressive. I think Mr. DeMarco is a very fine lawyer. I
5 know that from prior experience in other cases, and I think he
6 makes as strong a case as could be made for bail in this case
7 for Mr. Parrello.

8 However, I am persuaded that given the evidence
9 presented by the government, given the fact that Mr. Parrello
10 has a criminal history that includes a racketeering conviction
11 in this court that he was on supervised release for either
12 during or immediately before the commencement of this
13 conspiracy, he was previously detained in that other
14 racketeering case, given the nature of the violent acts, given
15 the nature of Mr. Parrello's role as the guy who's ordering
16 different acts of violence remotely, I think that the
17 government has established by clear and convincing evidence
18 that he is a danger and that there are no conditions that would
19 reasonably assure the safety of the community going forward.

20 So notwithstanding the fact there are a lot of people
21 who seem to know and like Mr. Parrello, that, I think, is
22 relevant but not dispositive. So I'm going to respectfully
23 deny the request.

24 So, Mr. Parrello, I have to call them as I see them.
25 I'm the ump in a baseball game. So that's the way I see it.

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1 It looked to me that the evidence here establishes what the
2 government is suggesting it does. That's not -- I mean, you're
3 not without prejudice to renewing a request if, when you have
4 the wiretaps, you can say that some of this stuff is
5 overstated. You can always do that, Mr. DeMarco, as you know.
6 So I'll issue an order that just memorializes my ruling, but I
7 think the government has met the standard here.

8 Ms. Kramer, something you wanted to say?

9 MS. KRAMER: I just wanted to say, your Honor, that I
10 will communicate with Mr. DeMarco and specifically direct him
11 to portions from the 2011 wiretap that are relevant.

12 While we are here, although I cannot find in my notes
13 a call with this defendant from the time period, on
14 February 18, 2011, a Luchese associate placed a call to
15 Genovese associate, and they discussed employing an individual
16 at this defendant's gambling club as security. They refer to
17 him that he had -- they refer to this defendant as the big guy
18 and said they had to get his approval.

19 Similarly, on March 31, 2011 --

20 MR. DeMARCO: I'm sorry, the first date? I'm sorry.

21 THE COURT: February.

22 MS. KRAMER: February 11, 2011, at 4:06 p.m.

23 On March 31, 2011, at approximately 8:15 p.m., an
24 individual placed a call to Anthony Zinzi, another defendant in
25 this case. They discussed dividing the money that was

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1 collected at the casino club and talked about doing it at
2 Parrello's direction.

3 On April 7, 2011, there was another recorded call with
4 a bartender at Rigoletto in which the bartender said the big
5 guy, referring to defendant Patsy Parrello, wanted to see the
6 cooperating witness. And they discussed subsequently -- the
7 cooperating witness placed a call to defendant Anthony Zenzi
8 talking about going to the restaurant, and they discussed a
9 problem with a gambling debt. Thereafter, the cooperator,
10 after meeting with defendant Patsy Parrello at Rigoletto on
11 April 7, 2011, during his term of supervised release, the
12 cooperator described the meeting, talked about his fear of
13 Patsy Parrello, and the fact that there was going to need to be
14 some resolution of a dispute concerning a gambling debt.

15 So the government will obviously do a more thorough
16 review, but based just on the notes in front of me that were
17 referring to defendant Patsy Parrello, he was actively involved
18 in the charged conspiracy during his supervised release. I
19 just wanted to put that on the record while we're all here,
20 your Honor. Thank you.

21 THE COURT: All right. So that doesn't change my
22 ruling, obviously. I do want to make clear that I have not
23 relied on the supplemental letter from the government. I don't
24 think they establish what they need to establish to present a
25 sealed document and sealed facts that the Court would rely on,

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1 and I don't think it's necessary, in any event.

2 All right. Then, Mr. DeMarco, I directed you to file
3 the bail proposal, your October 11 letter, and you're going to
4 do that with redactions. But it occurs to me, given how much
5 we've talked about the cosigners, the sheer number of them, and
6 some of the occupations, I guess I'd like you to address with
7 some authority whether or not there is -- whether the
8 presumption of open records has been rebutted with respect to
9 them. I think there are cases certainly where this has come
10 up. So if I give you a few days to do that --

11 MR. DeMARCO: Judge, based on the Court's ruling, I'm
12 inclined to just file it without the redactions at this stage.

13 THE COURT: File it without the redactions?

14 MR. DeMARCO: Without the redactions. I don't see the
15 need at this point. My concern was --

16 THE COURT: I thought you wanted to protect the
17 privacy of the cosigners.

18 MR. DeMARCO: I did, but based on the Court's ruling,
19 I'm not so sure that's -- I'll look into it, Judge, either way.
20 Either I'll give you some authority for the redactions or I'll
21 file it without.

22 THE COURT: Yes. I'm anxious to get most of the
23 letter docketed quickly so that anybody who wants to look can
24 look. To the extent that there's a debate or --

25 MR. DeMARCO: If this is okay, your Honor, I'll file

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1 it today with the redactions, and I can always file it
2 subsequently without.

3 THE COURT: Yes. You think by Friday you could get me
4 something, if you want to do redactions, that provides some
5 greater authority --

6 MR. DeMARCO: Sure.

7 THE COURT: -- and make some arguments as to why it is
8 that the presumption of open records is overcome?

9 MR. DeMARCO: Yes, sure.

10 THE COURT: Good. So I'll issue an order to that
11 effect just so it's on the docket.

12 MR. DeMARCO: Thank you.

13 THE COURT: As I said, we're not going to have this
14 conference on the 31st.

15 MR. DeMARCO: Definitely off?

16 THE COURT: That should be docketed. Maybe it didn't
17 hit until this morning. We're instead going to have our next
18 conference on December 9. I think that's going to give more
19 time for counsel and the defendants to review the discovery,
20 which is voluminous. The discovery coordinator is in the
21 process of collecting it all, copying it all, making it
22 available to the defendants in a form that can be used
23 efficiently by them. So it's a little bit of heavy start-up
24 costs, but I think once it's then delivered, I think it will
25 enable defendants and counsel to review the materials much more

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1 quickly and efficiently. But I don't think we'd have much to
2 talk about on Monday. I've issued that order, but since you're
3 here, I'm telling you.

4 All right. Anything else we should cover today?

5 MR. DeMARCO: No. Thank you, your Honor.

6 MS. KRAMER: Nothing from the government. Thank you,
7 your Honor.

8 THE COURT: Thank you all. We thank the marshals, and
9 let me thank the court reporter as well and the pretrial
10 officer. Thanks.

11 (Adjourned)